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| APPLICATION NO.        | FILING DATE                            | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------|----------------------------------------|----------------------|---------------------|------------------|
| 09/961,091             | 01/14/2002                             | Raymond P. Johnston  | 54404US008          | 6682             |
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| PO BOX 3342            | 7                                      | 11111                | BROWN, MICHAEL A    |                  |
| ST. PAUL, M            | N 55133-3427                           |                      | ART UNIT            | PAPER NUMBER     |
|                        |                                        |                      | 3772                |                  |
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|                        |                                        |                      | 10/05/2007          | ELECTRONIC       |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

LegalUSDocketing@mmm.com LegalDocketing@mmm.com

| Application No.   Applicant(s)   JOHNSTON ET AL.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | •                                                    |                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                     |                                                                                                             |  |  |  |
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| Examiner                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                      |                                                                                                                                                                                                                                                                                                                                                                                                        | Application No.                                                                                                                     | Applicant(s)                                                                                                |  |  |  |
| Michael Brown   3772                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                      |                                                                                                                                                                                                                                                                                                                                                                                                        | 09/961,091                                                                                                                          | JOHNSTON ET AL.                                                                                             |  |  |  |
| Previol for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of the map by a validable under the proteins of 37 CPF1.13(a). In covern, however, may a reply be dimarbled after 5X (6) MONTHS from the railing date of this communication.  Failuse to proxy which the stor canded period from the semiling date of this communication.  Failuse to proxy which the stor canded period from the semiling date of this communication.  Failuse to proxy which the stor canded period from the semiling date of this communication.  Failuse to proxy which the stor canded period from the semiling date of this communication.  Failuse to proxy which the stor canded period from the semiling date of this communication.  Failuse to proxy which the stor canded period from the semiling date of this communication.  Proxy and canded the semiling date of the communication.  The semiline to communication (s) filed on 0.6 September 2007.  This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under £x parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 36.37.39-46.48-54 and 56-60 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) Claim(s) 36.37.39-46 and 48-50 is/are rejected.  7) Claim(s) is/are objected to.  8) Claim(s) 36.37.39-46 and 48-50 is/are rejected.  7) Claim(s) is/are objected to.  8) The specification is objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abovance. See 37 CFR 1.55(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S. |                                                      | Office Action Summary                                                                                                                                                                                                                                                                                                                                                                                  | Examiner                                                                                                                            | Art Unit                                                                                                    |  |  |  |
| A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the provisions of 31 CPR 1.136(s). In or over, Involver, may a reply be limitly filled  Extensions of time may be available under the provisions of 31 CPR 1.136(s). In or over, Involver, may a reply be limitly filled  Extensions of time may be available under the provisions of 31 CPR 1.136(s). In or over, Involver, may a reply be limitly filled  Extensions of time may be available under the provisions of 31 CPR 1.136(s). In overell, throwever, may a reply be limitly filled  Extensions of time may be available under the provisions of 31 CPR 1.136(s). In overell, throw the provision of 32 CPR 1.136(s). In overell, through filled through fille |                                                      |                                                                                                                                                                                                                                                                                                                                                                                                        | <u> </u>                                                                                                                            |                                                                                                             |  |  |  |
| WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Estamions of time may be available under be provided of 30°FR 1.13(a). In no event, however, may a reply be timely flied after SIX (6) MONTIS from the mailing date of this communication.  If No period for reply is appelled above, the mean-monitory will publy and will expire SIX (6) MONTIS from the mailing date of this communication.  If No period for reply is appelled above, the mean-monitory will publy and will expire SIX (6) MONTIS from the mailing date of this communication, even if timely fleet, may reduce any seared patient term adjustment. Sea 7 CFR 1.704(b).  Status  1)② Responsive to communication(s) filled on 06 September 2007.  2a)□ This action is FINAL.  2b)□ This action is FINAL.  2b)□ This action is non-final.  3)□ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)○ Claim(s) 36.37.39-46.48-54 and 56-60 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  5)□ Claim(s) 36.37.39-46.48-54 and 56-60 is/are rejected.  7)□ Claim(s) is/are objected to.  8)□ Claim(s) are subject to restriction and/or election requirement.  Application Papers  9)□ The specification is objected to by the Examiner.  10)□ The drawing(s) filled on is/are: al□ accepted or b)□ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abovance. Sea 37 CFR 1.85(a).  Replacement drawing sheat(s) including the correction is required if the drawing(s) is objected to. Sea 37 CFR 1.121(d).  11)□ The odrawing(s) filled on is/are: al□ accepted or b)□ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abovance. Sea 37 CFR 1.85(a).  Replacement drawing sheat(s) including the correction is required if the drawing(s) is objected to. Sea 37 CFR                                      |                                                      |                                                                                                                                                                                                                                                                                                                                                                                                        | pears on the cover sheet wi                                                                                                         | th the correspondence address                                                                               |  |  |  |
| 1)⊠ Responsive to communication(s) filed on <u>06 September 2007</u> .  2a)□ This action is FINAL.  2b)⊠ This action is non-final.  3)□ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)☑ Claim(s) <u>36.37.39-46.48-54 and 56-60</u> is/are pending in the application.  4a) Of the above claim(s) <u>—</u> is/are withdrawn from consideration.  5)☑ Claim(s) <u>36.37.39-46.48-56 is</u> /are rejected.  7)□ Claim(s) <u>—</u> is/are objected to.  8)□ Claim(s) <u>—</u> are subject to restriction and/or election requirement.  Application Papers  9)□ The specification is objected to by the Examiner.  10)□ The drawing(s) filed on <u>—</u> is/are: a)□ accepted or b)□ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11)□ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12)□ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)□ All b)□ Some * c)□ None of:  1.□ Certified copies of the priority documents have been received.  2.□ Certified copies of the priority documents have been received in Application No  3.□ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(e)  1)□ Notice of References Cited (PTO-892)  Paper No(s)Mail Date                                                                                                                                                                                    | WHIC<br>- Exte<br>after<br>- If NC<br>- Failu<br>Any | CHEVER IS LONGER, FROM THE MAILING DA<br>nsions of time may be available under the provisions of 37 CFR 1.1.<br>SIX (6) MONTHS from the mailing date of this communication.<br>Depriod for reply is specified above, the maximum statutory period varieto reply within the set or extended period for reply will, by statute<br>reply received by the Office later than three months after the mailing | ATE OF THIS COMMUNIC 36(a). In no event, however, may a rewill apply and will expire SIX (6) MON cause the application to become AB | CATION.  Poly be timely filed  THS from the mailing date of this communication.  ANDONED (35 U.S.C. § 133). |  |  |  |
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| closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 2a) <u></u> ☐                                        |                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                     |                                                                                                             |  |  |  |
| Application of Claims  4) ○ Claim(s) 36.37.39-46.48-54 and 56-60 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) ○ Claim(s) 51-54 and 56-60 is/are allowed.  6) ○ Claim(s) 36.37.39-46 and 48-50 is/are rejected.  7) □ Claim(s) is/are objected to.  8) □ Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) □ The specification is objected to by the Examiner.  10) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) □ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) □ All b) □ Some * c) □ None of:  1. □ Certified copies of the priority documents have been received.  2. □ Certified copies of the priority documents have been received in Application No  3. □ Copies of the certified copies of the priority documents have been received in Interview Summary (PTO-413).  * See the attached detailed Office action for a list of the certified copies not received.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 3)                                                   | 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is                                                                                                                                                                                                                                                                                     |                                                                                                                                     |                                                                                                             |  |  |  |
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| 5) Claim(s) 51-54 and 56-60 is/are allowed. 6) Claim(s) 36,37,39-46 and 48-50 is/are rejected. 7) Claim(s) is/are objected to. 8) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).     a) All b) Some * c) None of:     1. Certified copies of the priority documents have been received.     2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Tertsperson's Patent Drawing Review (PTO-948)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 4)🖂                                                  | Claim(s) <u>36,37,39-46,48-54 and 56-60</u> is/are p                                                                                                                                                                                                                                                                                                                                                   | ending in the application.                                                                                                          |                                                                                                             |  |  |  |
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| 7) Claim(s) is/are objected to. 8) Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) The specification is objected to by the Examiner.  10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 5)⊠                                                  | Claim(s) <u>51-54 and 56-60</u> is/are allowed.                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                     |                                                                                                             |  |  |  |
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| a) ☐ All b) ☐ Some * c) ☐ None of:  1. ☐ Certified copies of the priority documents have been received.  2. ☐ Certified copies of the priority documents have been received in Application No  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  1) ☒ Notice of References Cited (PTO-892)  2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Priority (                                           | under 35 U.S.C. § 119                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                     |                                                                                                             |  |  |  |
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| 2) Notice of Brandsperson of Archive (1.10 and)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                      |                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                     |                                                                                                             |  |  |  |
| 3)     Information Disclosure Statement(s) (P10/Sb/08)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                      | ce of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO/SB/08)                                                                                                                                                                                                                                                                                                        |                                                                                                                                     |                                                                                                             |  |  |  |
| Paper No(s)/Mail Date 6)  Other:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                      |                                                                                                                                                                                                                                                                                                                                                                                                        | 6)  Other:                                                                                                                          |                                                                                                             |  |  |  |

Application/Control Number: 09/961,091

**Art Unit: 3772** 

## **DETAILED ACTION**

## Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 36-37, 39-46 and 48-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-41 of U.S. Patent No. 6,420,622. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims set forth above are broader in scope and similar in subject matter to claims 1-41 in U. S. Patent No. 6,420,622.

## Allowable Subject Matter

Claims 51-54 and 56-60 are allowed.

## Conclusion

Application/Control Number: 09/961,091

Art Unit: 3772

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown September 29, 2007

> MICHAEL A. BROWN PRIMARY EXAMINER

Michael B